

## Senate Bill No. 1173

### CHAPTER 860

An act to add Title 17 (commencing with Section 3269) to Part 4 of Division 3 of the Civil Code, relating to liability, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1998. Filed  
with Secretary of State September 25, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1173, Vasconcellos. Liability: disclosure of Year 2000 information.

Existing law provides that an obligation arises either from a contract or from the operation of law. An obligation arising from operation of law may be enforced in the manner provided by law or by a civil action. Existing law provides governmental entities with limited immunity from liability for injuries, however, that immunity does not extend to liability based on contract or to obtain relief other than money damages.

This bill would provide immunity from liability for tort damages to any person or entity, including governmental entities, for injury resulting from the gratuitous disclosure of information relating to the Year 2000 Problem, as defined, affecting computer systems and programs, as specified. The bill would not, however, limit liability for those persons or entities that provide Year 2000 solutions for profit, as specified; nor would it affect any other remedy available at law.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) The "Year 2000 Problem," characterized by the failure of computers to function because they are programmed to recognize the year using the last two digits and may be unable to recognize dates after December 31, 1999, threatens potential catastrophe and poses a substantial risk to the welfare of the citizens, businesses, and government of California.

(b) Massive efforts are underway in both the public and private sectors to prepare all "mission critical" computer systems to recognize the year 2000, thereby protecting against computer failures that could jeopardize our public safety, our economic health,

our ready access to electricity and water, our medical care, and numerous other essential goods and services.

(c) The free flow of information about solutions to the Year 2000 Problem among public and private entities and individuals is essential to our collective efforts to achieve Year 2000 Problem compliance and minimize the risks associated with Year 2000 Problem failures.

(d) Businesses and individuals are reluctant to share information relating to the Year 2000 Problem due to concerns that the information, although shared in good faith, may be used or applied incorrectly or include unintended inaccuracies that may lead to costly legal complications.

(e) The federal Department of Justice Antitrust Division has informed publicly traded corporations that sharing data with one another regarding the Year 2000 Problem should not be considered an antitrust issue.

(f) The federal Securities and Exchange Commission is requiring broker-dealers to submit information on where they are in the Year 2000 Problem compliance process in two reports on August 31, 1998, and April 30, 1999.

SEC. 2. It is the intent of the Legislature to ensure a free flow of information about Year 2000 Problem remediation efforts by creating a safe harbor for individuals and public and private entities that share, in good faith, information about their preparations for Year 2000 Problem compliance.

SEC. 3. Title 17 (commencing with Section 3269) is added to Part 4 of Division 3 of the Civil Code, to read:

#### TITLE 17. YEAR 2000 INFORMATION DISCLOSURES

3269. For purposes of this title, the following definitions shall apply:

(a) “Year 2000 Problem” means any expected or actual computing, physical, enterprise, or distribution system complications that may occur in any computer system, computer program, software application, embedded systems, embedded chip calculations, or other computing application as a result of the year change from 1999 to 2000. These complications are often associated with the common programming practice of using a two-digit field to represent a year, resulting in erroneous date calculations, an ambiguous interpretation of the term “00,” the failure to recognize the year 2000 as a leap year, the use of algorithms that use the year “99” or “00” as a flag for another function, or the use of applications, software, or hardware that are date sensitive.

(b) “Information” means any assessment, projection, estimate, planning document, objective, timetable, test plan, test date, or test result related to the implementation or verification of Year 2000



Problem processing capabilities of a computer system, computer program, software application, embedded systems, embedded chip calculations, or other computing application and intended to solve a year 2000 Problem.

(c) “Disclosure” and “discloses” means any dissemination or provision of information without any expectation or right to remuneration or fee therefor.

(d) “Person” means any individual, corporation, partnership, business entity, joint venture, association, the State of California or any of its subdivisions, or any other organization or any combination thereof.

3270. (a) Notwithstanding any other law, any person that discloses information regarding the Year 2000 Problem or any potential solutions to the problem, including, but not limited to, those persons described in subdivision (b), shall not be liable for damages in any tort action brought against that person regarding the Year 2000 Problem for any injury caused by, arising out of, or relating to, the use of the information disclosed, except as provided in Section 3271.

(b) This section shall apply to any person that, when making the disclosures described in subdivision (a), specifically disclaims the universal applicability of the potential solutions disclosed, and expresses a unique experience with any Year 2000 information.

(c) This section does not apply to prospective solutions sold or exchanged for profit or provided for profit by a person or entity holding itself out as a provider of Year 2000 solutions.

3271. (a) Section 3270 shall not apply if the claimant in an action described in that section establishes that the Year 2000 Problem information disclosure was all of the following:

(1) Material.

(2) False, inaccurate, or misleading.

(3) Either (A) made with the knowledge that the statement was false, inaccurate, or misleading, (B) if the information disclosed was a republication of or otherwise a repetition of information from another person, made without a disclosure that the information was based on information supplied by another person or made with the knowledge that the statement was false, inaccurate, or misleading, or (C) made with gross negligence in the determination of the truth or accuracy of the disclosure or in the determination of whether the disclosure was misleading.

(b) Nothing in this title shall be deemed to affect any other remedy available at law, including, but not limited to, temporary or permanent injunctive relief, against a public or private entity or individual with respect to Year 2000 Problem information disclosures.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to significantly reduce the risks posed to the livelihood of Californians, the ability of industry to conduct business in the state, and the state to mitigate possible systems failures due to the Year 2000 Problem, as defined in this act, that would damage the state's ability to do business with and provide for its citizens, it is necessary that this act take effect immediately.

